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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1460 OF 2007

Seekoti Sivakoti Lakshmamma. ...Appellant.

Vs.

Seekoti Govindamma & Ors. ...Respondents.

Mr. C.U. Singh, Senior Counsel a/w Mr. P.M. Patel, advocate for the appellant.

Mr. Dilip Mandavia for respondent Nos. 1 to 3.

CORAM : ANOOP V. MOHTA,J.

DATED : 13th August, 2007

P.C.:-

1. Late Seekoti Sivakoti Rama Rao, a Hindu, was employed as a AB seamen with one M/s. Fleet Management Ltd., drawing salary of U.S. $ 1,000/- per month. Late Seekoti Sivakoti Rama Rao, age about 41 years, fell sick on the board of the vessel M.V. JO KASHI and expired at Antewerpen, Belgium on 28th March, 2006.

2. M/s. Fleet Management Ltd., for Rs.50,59,372/- with the Office of the Commissioner for Workmen Compensation at Bandra, Mumbai, since the deceased employee died in the course of the employment without making will in compliance of The Workmen Compensation

Act. (for short, "W.C.Act")

3. The appellant filed an application for disbursement of the amount being Application (WCA) No. 203/A-26 of 2007 in which she as widowed mother prayed that she be paid Rs.20,00,000/- towards compensation for self and sister of deceased who resides with her and Rs.30,59,372/- be distributed equally between widow and her two minor children.

4. By Judgment dated 23rd March, 2007, in Application (WCA) No.203/A-26 of 2007, Judge 11th Labour Court held that the appellant is entitled to Rs.15,00,000/-, sister of the deceased Rs.5,00,000/-, widow is entitled to Rs.20,59,372/-, minor daughter and minor son each are entitled to Rs.5,00,000/-. It was held that the sum that minors are entitled to be invested in nationalised bank in their name for six years and mother being natural guardian will operate the fixed deposit account.

5. The first respondent then filed an application under Section 8(8) of the W. C. Act for reconsideration of the order dated 26th March, 2007 on the ground interalia she is uneducated house wife

fully dependent on the deceased income. The Court vide its order dated 7th April, 2007 held that respondent No.1, widow is entitled to Rs.35,59,372/-, respondent No.2 and 3 each are entitled to Rs.5,00,000/- and the appellant is entitled to Rs.5,00,000/-. It was held that the sum that minors are entitled to be invested in nationalised bank in their name for six years and mother being natural guardian will operate the fixed deposit account.

6. The WC Act provides as per Section 2(d)(1) the meaning of widow, mother and minors are Class-I dependents. Section 10-A, 30 and Rule 8 of the WC Act provide that the Commissioner has power to determine and distribute the compensation in respect of the deceased workman. The further requirement is the Commissioner should follow the principle of natural justice while exercising unfettered discretion, **1979 F.L.R. page 72 Kunchali Rudrani Vs. Baby.** The payment of compensation is, therefore, governed by the above provisions **2007 (II) CLR 400, Sohanbeer Vs. Workmen's Compensation Commissioner, Muzaffarnagar & Ors.**

7. The learned counsel appearing for the petitioner/

appellant, basically contended that the Commissioner ought not to have reviewed or recalled the order dated 23/03/2007. The operative part of which is as under:-

> . "The compensation amount of Rs.50,59,372/- is distributed amongst the legal heirs and dependents of the deceased as such that;
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> 1. The amount of compensation of Rs.20,59,372/- shall be paid to the widow of the deceased Smt.Seekoti @ Sivakoti Govindamma by cross cheque.
>
> 2. The amount of compensation of Rs.15,00,000/- shall be paid to Smt.Seekoti @ Sivakoti Lakshmamma, widowed mother of the deceased by cross cheque.
>
> 3. The amount of compensation of Rs.5,00,000/- shall be paid to widowed sister of the deceased Smt.Landa Seethamma by cross cheque.
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> 4. The amount of compensation amount of Rs.5,00,000/- each allotted to the share of minor daughter Miss Seekoti @ Sivakoti Rama Lakshmi and son Master Seekoti @ Sivakoti Ravi Kumar shall be invested in fixed deposit in Nationalised Bank in their names for six years and their fixed deposit account shall be operated by their widowed mother Smt. Seekoti @ Sivakoti Govindamma being natural guardian.

8. The mother is a dependent as contemplated under Section 2(d) of the WC Act. He has relied on **Bakulabai Vithoba Palampalle Vs. Rajnabai Prabhodchandra Muchala & Ors. 1991 Lab I.C. 450** and

further contended that the mother, therefore, is also partially dependent on the earnings of the deceased workman. He has strongly relied on the provisions of Hindu Succession Act to show that as the deceased died intestate, the mother, widow and two minor children are entitled to 1/4th share each.

9. The learned counsel appearing for the respondent has further strongly relied on Sohanbeer (Supra) and contended that in view of the scheme of WC Act, the law of inheritance is not applicable. The payment or distribution of compensation is governed by the provisions of WC Act. He, therefore, has supported the impugned order by saying that the widow being the dependent on the deceased is entitled to maximum compensation alongwith the children as awarded.

10. The submission of the learned counsel appearing for the appellant based on the Hindu Succession Act, that the discretion should have been exercised by the Commissioner as done by passing the earlier order dated 23/03/2007, granting the compensation of Rs.15,00,000/- to the widowed mother of the deceased. The impugned order is, therefore, unsustainable.

11. Considering the scheme of the WC Act and the power as given to the Commissioner and if exercised judiciary by following the principle of natural justice, such order cannot be interfere with, unless it is unjust, perverse and contrary to the law.

12. The submission of learned counsel appearing for the appellant that the principle of Hindu Law should be made applicable to the present case is not correct. There is no such foundation available. The legislature has taken note of all such laws while providing discretionary power to the Commissioner under the WC Act to assess and distribute the compensation to the dependents as provided under Section 2(d) of the WC Act. The submission, therefore, to apply the Hindu Succession Act, in the cases in hand where the deceased died intestate is unconceivable and is rejected. The Commissioner cannot be compelled to distribute or assess the compensation in the present case, based on such personal Laws. The Commissioner should exercise his judicial discretion following the principle of natural justice. Therefore, considering the scheme and purpose of the Act, I am in agreement that the view taken by the Allahabad High Court in Sohanbeer

(Supra).

13. Now the question is what was the occasion for the Commissioner to review or recall the earlier order. The learned counsel appearing for the respondent has strongly relied on **1988-II CLR 353, Vijay J. Gadhvi Vs. State of Gujrat & Ors.** and contended that the appeal is liable to be rejected on the ground of suppression of material fact. In other words, as the appellant suppressed various material facts, which later on noted by the Commissioner on the application filed by the respondents, rightly passed the impugned order and that is too after considering oral and documentary evidence based on record.

14. Admittedly, the applicant, the mother has six sons which includes the deceased. She is not therefore, can be said to be dependent on the income of the deceased as contemplated under the W.C. Act. The reliance on the **72 F.L.R. (Kunchali Rudrani Vs. Baby),** help only to the extent that the unfettered discretionary power to be exercised by following the rules of natural justice. There is no opposition to this principle. The same is reiterated in **SK. Jumman Vs. Shahajahanbi 1971 Bom. L.R. 66 (Vol. LXXIV).**

The facts are distinct and distinguishable in all these cases.

15. The Commissioner in the present case, therefore, after reconsidering the suppression of the facts has recalled the order and rightly exercised the discretion in favour of the respondent and her two children. The mother in the circumstances cannot be said to be fully dependant on the deceased son, as claimed.

16. Admittedly, when the first order was passed, respondent wife was not heard. The applicant submitted her case and got the order. later on, the commissioner, based on the material placed, after hearing and giving opportunity to the respondent wife of the deceased, has passed the impugned order. The impugned order cannot be said to the perverse or contrary to the material or passed in breach of principle of natural justice. The commissioner, in the background, distributed the amount therefore, cannot be said to be wrong or illegal. Even the case of widow sister remained unproved by the mother.

17. In the present case, the wife of the deceased and

the two children are definitely dependent of the deceased. She is also suffering from Kidney illness. The mother was not solely dependent of the deceased. There are four other sons who are on high post and have sufficient income to maintain their old mother. The mother was not living at the relevant time with the deceased or the respondents.

18. By order dated 07/04/2007 this Court has granted ad-interim relief in following terms:-

> 1. Rule returnable after 8 weeks. Humdust allowed. In the meantime there shall be ad-interim relief in terms of prayer clause (b). Learned counsel for the applicant submits that the applicant has already withdrawn the amount of Rs.25,59,372/- Out of this amount withdrawn by the widow an amount of Rs.12,50,000/- shall be kept by her in the fixed deposit for a period of 3 years and shall not withdraw that amount in any manner without the order of the court. Learned counsel for the applicant states that the amount of Rs.10 lacs has remained with the Commissioner. The same should not be disbursed to any party until further orders.

. The amount of Rs.12,50,000/- (Rupees twelve lacs fifty thousand only) as directed, to be kept in fix deposit for three years. By that time one of the two children of the deceased will also be a major.

19. The interim order as granted is modified in following terms but now shall be final order in so far as additional deposit for three years of amount of Rs.12,50,000/- (Rupees twelve lacs fifty thousand only).

20. The commissioner shall release the amount to the applicant to the extent of Rs.5,00,000/- (Rupees five lacs only) as ordered, if not released. If released, the balance amount of Rs.5,00,000/- (Rupees five lacs only) be released in favour of respondent No. 1 Govindamma.

21. The respondents to utilise the amount for the benefit of all including the minor son and daughter including for their education, marriage and maintenance. In case respondent-wife decides to re-marry, the amount of Rs.12,50,000/- shall be divided equally between the children only.

22. The impugned order dated 07/04/2007, of the commissioner is maintained and modified subject to the following extent.

. "Review application is allowed.

1. The order dated 23/03/2007 in Application (WCA) No.203/A-26 is modified as below.

2. The compensation amount of Rs.50,59,372/- is distributed amongst the legal heirs and dependents of the deceased as such that:-

3. The amount of compensation of Rs.35,59,372/- shall be paid to the widow of the deceased Smt.Seekon @ Sivketi Govindamma by cross cheque.

4. The amount of compensation of Rs.5,00,000/- shall be paid to Smt.Seekoti @Sivakoti Lakshmamma, widowed mother of the deceased by cross cheque.

5. The amount of compensation amount of Rs.5,00,000/- each allotted to the share of minor daughter Ms. Seekoti @ Sivakoti Ramalakshmi and son Master Seekoti @ Sivakoti Ravi Kumar shall be invested in fixed deposit in Nationalised Bank in their names for six years and their fixed deposit account shall be operated by their widowed Smt. Seekoti @ Sivakoti Govindamma being natural guardian."

23. Rs.12,50,000/- as deposited shall remain to be invested as ordered by this Court on 07/04/2007 for three years. However, it is subject to liberty to apply for withdrawal for the benefit of all respondents, i.e. marriage, education, common house flat purchase in joint name. If respondent wife re-marries, this amount shall be divided between the son and daughter equally.

24. The appeal is disposed of in above terms. The Civil Application is also disposed of accordingly.

25. No costs.

(ANOOP V. MOHTA, J.)